

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CHRISTIAN V.

Claimant,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. N 2006050426

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 14, 2006, in Corte Madera, California.

Claimant Christian V. was represented by his father and mother.

Lisa Rosene, L.C.S.W., Chief, Social Work Services, represented service agency Golden Gate Regional Center (GGRC).

The record closed on July 14, 2006.

ISSUE

Whether GGRC is required to fund couples counseling for Claimant's parents with a particular counselor.

FACTUAL FINDINGS

1. Claimant was born on January 10, 2003, and is currently three years old. He has been diagnosed with cerebral palsy/spastic quadriplegia. Prior to age three, Claimant received Early Intervention Services Act (Early Start) services through GGRC. Claimant lives at home with his parents and two sisters.

2. Claimant's intensive needs have created a great deal of stress in his family unit. In May 2004, his parents began seeing Ilene English, M.F.T., for couples counseling. When Claimant began receiving Early Start services in September 2004, his parents requested that the counseling be made part of the service plan. An IDT Note dated September 24, 2004, states: "They are requesting GGRC funding of weekly couples' therapy, to help them work out a more adaptive way to cope with their circumstances and, therefore, help [Claimant to] benefit from early intervention services." This request was granted. GGRC paid for the weekly couples counseling provided by English until Claimant's third birthday.

3. Early Start services cease when a child turns three years old – at age three, a child may be eligible for services pursuant to the Lanterman Act from his local regional center. Although there are many similarities, Early Start and the Lanterman Act are two different programs, with different funding sources and with different sets of rules and regulations. Claimant was found eligible for Lanterman Act services and hence is a GGRC consumer. His first individual program plan (IPP) is dated January 6, 2006. As regards couples counseling, the IPP states: "[Claimant's parents] have been receiving weekly couples counseling for the past year from Ilene English, MFT, to help them better cope with the stress [Claimant's] needs have placed on their marriage, their older daughter's sense of self, and their entire family system. They are requesting continued GGRC funding of family counseling at one hour per week."

4. It appeared that GGRC was considering the request as GGRC requested that English provide a description of the measurable therapeutic goals she had for Claimant's parents. By letter dated January 26, 2006, English provided a list of six goals including descriptions of each. On January 27, 2006, the ID Team met to review English's report and to discuss the couples counseling issue. The discussion included how "to separate out the goals related to [Claimant's] special needs from other family and couples' issues." For example, the family had issues that GGRC team members felt were less directly related to Claimant, such as financial stressors and the upcoming birth of a third child.

5. On January 30, 2006, GGRC issued a Notice of Proposed Action formally denying the request to continue to fund couples counseling with English. As authority, SARC invoked the Lanterman Act provisions related to cost-effectiveness and availability of generic resources that regional centers are not allowed to supplant. GGRC instead offered to fund couples counseling with a GGRC employee who is a licensed clinical social worker. In addition, GGRC provided information regarding generic agencies who provide family counseling in the area.

6. Claimant's parents appealed the decision by filing a request for fair hearing. On May 18, 2006, an Informal Meeting was held to discuss the couples counseling funding issue, and, it is assumed, to attempt to resolve it. On May 22, 2006, a report was issued that describes the meeting and makes findings and recommendations. It is signed by GGRC staff

Dennis M. Nunan, M.S.W., Assistant Chief, Social Work Services, and Theresa Keys, M. D., Staff Physician.

The report states that generic funding sources are available for couples counseling. It provides, however, that in order to assist in the transition to use of generic services, “GGRC will continue to fund the weekly services provided by Ilene English, MFT, through June 30, 2006. No further state funding of this service will be provided past that point.”

7. The recommendation or offer to *continue* to fund counseling with English through June 30 was an error. Claimant’s parents had stopped the counseling sessions in January 2006 after GGRC issued the Notice of Proposed Action. Claimant’s parents did not accept GGRC’s offer and decided to go forward with the fair hearing process. This hearing followed.

8. Claimant’s parents are confused about the position that GGRC has taken. From their point of view, GGRC’s request for a report from English regarding her therapeutic goals is at odds with the position that couples counseling is a generic service that it cannot legally fund.

9. Telford Moore, a GGRC psychologist, attended ID Team meetings regarding Claimant. He testified that he was probably the one who requested the report from English. Moore believes that if GGRC is going to be asked to pay for counseling, then it must have information about counseling goals and how progress will be measured. It is important, in his view, for the therapist to show that the work is producing something. When asked why, if couples counseling is a generic resource that need not be provided by English, he asked for the information, Moore stated that it is information he would ask of any agency and that “it is a starting point.”

10. Claimant’s parents contend that, since GGRC was willing to continue funding for a period of time despite the law, it must be “a gray area.” This opinion was reinforced by the request to English and discussions by the ID Team. GGRC contends that, although parental preference is considered, it does not trump the legal requirement that generic resources be used first — regional centers are meant to provide a safety net and not to supplant other services.

APPLICABLE LAW

1. The purpose of the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4501 et seq.):

is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the

community. *Association for Retarded Citizens v. The Department of Developmental Services* (1985) 38 Cal.3d 384, 388.

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. However, the Act directs the Department, in turn, to provide the services through agencies located in the communities where the clients reside. Specifically:

the state shall contract with appropriate agencies to provide fixed points of contact in the community. . . . Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers. (Welf. & Inst. Code § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place:

A regional center may. . . purchase service. . . from an individual or agency which the regional center and consumer. . . or parents. . . determines will best accomplish all or any part of that [IPP] (Welf. & Inst. Code § 4648, subd. (a)(3)).

4. Regional centers are specifically charged to provide services in the “most cost-effective and beneficial manner” (Welf. & Inst. Code § 4685, subd. (c)(3)) and with “the maximum cost-effectiveness possible” (Welf. & Inst. Code § 4640.7, subd. (b)). To duplicate a service available elsewhere to a consumer is obviously not a cost-effective use of public funds. Accordingly, regional centers are required to “first consider services and supports in the natural community. . . .” (Welf. & Inst. Code § 4648, subd. (a)(2).) In addition, regional centers are enjoined not to supplant the budget of any agency that has a legal responsibility to serve the general public and that receives public funds for providing those services. (Welf. & Inst. Code § 4648, subd. (a)(8).) In other words, regional centers may not purchase services and supports to implement an IPP if they are available elsewhere.

DISCUSSION

The desire of Claimant’s parents to continue in counseling with a therapist they had been working with successfully is completely understandable, as was their confusion when GGRC appeared to consider their request while at the same time stating that it could not be legally granted. But the fact remains that the law supports GGRC’s decision and there is no legal basis to overrule it. It was demonstrated that generic resources are available to provide couples counseling. It is therefore determined that GGRC properly denied Claimant’s parents’ request that it fund counseling by Ilene English, M.F.T.

ORDER

Claimant Christian V.'s appeal is denied.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.